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Before the

TENNESSEE REGULATORY AUTHORITY

IN RE:

BELLSOUTH TELECOMMUNICATIONS, INC., CITIZENS  
COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.  
PETITION FOR EXEMPTION OF CERTAIN SERVICES

DOCKET NO. 03-00391

\*\*\*\*\*

REBUTTAL TESTIMONY  
OF  
STEVE BROWN

\*\*\*\*\*

October 18, 2004

**I. Introduction**

**Q\_1. Please state your name.**

**A\_1. Steve Brown.**

**Q\_2. What is your job title and where do you work?**

**A\_2. I am an Economist in the Consumer Advocate and Protection Division (CAPD), Office of the Attorney General.**

**Q\_3. Are you the same Steve Brown who gave direct testimony representing the opinion of the CAPD in this proceeding of the Tennessee Regulatory Authority (TRA)?**

**A\_3. Yes, I am.**

**Q\_4. What testimony are you giving now?**

**A\_4. The testimony I am giving now is rebuttal testimony regarding the incumbent's testimony in this docket.**

**Q\_5. Whose testimony are you rebutting?**

**A\_5. I am rebutting the testimony of the witnesses who have provided direct testimony for Telecommunications (BellSouth), United Telephone-Southeast, Inc. (UTSE) regarding the deregulation of PRI service in Tennessee. They are:**

**Kathy K. Blake - BellSouth's Director of Policy Implementation;**

David R. Marshall - Sprint Business Solutions  
Sales Manager;

**II. BellSouth's and USTE's Offers Of Proof**

Q\_6. What have the witnesses offered as proof that potential and existing competition is an effective regulator of the price of PRI service in Tennessee?

A\_6. The witnesses offer several reasons meant to prove that potential and existing competition is an effective regulator of the price of PRI service in Tennessee. According to Kathy Blake and David Marshall, potential and existing competition is an effective regulator of the price of PRI service in Tennessee, where PRI prices are always forced down by competition, but never forced up by BellSouth's or USTE's market power.

Q\_7. Do the witnesses testify that deregulation will allow them to raise PRI prices?

A\_7. Yes. The witnesses testify that deregulation will allow them to raise PRI prices.

David Marshall testifies:

*"Q What relief is [USTE] seeking in this docket?"*

*"A [USTE] is asking for the regulatory relief that existing customers be given 30 days' notice on rate increases " [Marshall, Direct, page 3, line 21 to page 4, line 6]*

Kathy Blake testifies:

1  
2                   *"Q What type of is BellSouth seeking ?*  
3

4                   *" A   BellSouth will provide notice to existing customers of any*  
5 *increase in pricing 30 days prior to any such increase " [Blake,*  
6 *Direct, page 8, line 20 to page 9, line 6]*  
7

8    **Q\_8.       Do the witnesses testify that deregulation will**  
9                   **allow them to raise PRI prices without regard**  
10                  **to the pricing constraints in their price-cap**  
11                  **plans that have been approved by the TRA?**  
12

13   **A\_8.       No. The witnesses do not testify that**  
14                  deregulation will allow them to raise PRI  
15                  prices without regard to the pricing  
16                  constraints in their price-cap plans. However,  
17                  their claims that potential and existing  
18                  competition is an effective regulator of the  
19                  PRI market are not persuasive, in my opinion.  
20                  Therefore, in my opinion, deregulation will  
21                  give the petitioners an ability to set PRI  
22                  prices without regard for the constraints in  
23                  the price-cap plans.  
24

25   **Q\_9.       In your opinion, do the witnesses offer**  
26                  **evidence justifying the need to set PRI prices**  
27                  **without regard for the constraints in the**  
28                  **price-cap plans.**  
29

30   **A\_9.       No. The witnesses do not offer evidence**  
31                  justifying the need to set PRI prices without  
32                  regard for the constraints in the price-cap  
33                  plans.  
34

35   **Q\_10.      Why would the petitioners want to raise prices**  
36                  **PRI prices?**  
37

1 A\_10. The petitioners would want to raise PRI prices  
2 if the PRI service is a means for a competitor  
3 to capture USTE's or BellSouth's POTS customers  
4 or otherwise compete with USTE and BellSouth.  
5 As the FCC said in 1996:

6  
7 *"the requirements in section 251 [of the 1996*  
8 *Telecommunications Act] obligate incumbent LECs to provide*  
9 *interconnection to competitors that seek to reduce the incumbent's*  
10 *subscriberhip and weaken the incumbent's dominant position in*  
11 *the market "*  
12

13  
14 Q\_11. **Are BellSouth's and USTE's facilities needed by**  
15 **providers who offer their services to end-**  
16 **users?**  
17

18 A\_11. Yes. David Marshall testifies that USTE's  
19 competitors who own their own switching and  
20 transport facilities still need access to  
21 USTE's facilities:  
22

23 *"CLECs [who] own their own switching and transport facilities .*  
24 *generally only require the use of USTE's last-mile facilities to*  
25 *provision their ISDN-PRI services "*  
26

27 However, the providers' investments in  
28 switching and transport, could be rendered  
29 unprofitable when the cost to reach end-users  
30 is driven up. When USTE and BellSouth are freed  
31 from the pricing-constraints in their price-cap  
32 plans, these companies are in the position to  
33 raise arbitrarily the prices charged to other  
34 providers and make their investments less  
35 profitable or unprofitable.  
36

37 Non-facilities based providers, who may one-day  
38 wish to be facilities-based, will be  
39 discouraged from further investment to the  
40 extent that BellSouth and USTE are free to set

1 prices arbitrarily for their bottle-neck  
2 facilities.

3  
4 With regard to facilities-based providers,  
5 neither Kathy Blake nor David Marshall offer  
6 evidence on the ability of other providers to  
7 meet the demands of businesses who would  
8 supposedly shift providers in response to the  
9 30-day rate increase notice that the  
10 petitioners seek. With USTE and BellSouth are  
11 freed from the pricing-constraints in their  
12 price-cap plans, these companies are in the  
13 position to raise arbitrarily the prices  
14 charged to other providers and make their  
15 investments less profitable or unprofitable  
16

17 With USTE and BellSouth freed of all  
18 constraints which dampen price-increases,  
19 deregulation of PRI will create a dangerous  
20 probability that the petitioners will be in a  
21 position to drive other providers out, both  
22 facilities-based and non-facilities based.  
23

24 **Q\_13. Do the witnesses testify that the deregulation**  
25 **of PRI potentially puts them in a position to**  
26 **drive out other providers?**  
27

28 **A\_13.** No. The witnesses do not testify to that  
29 effect. Even though the companies are  
30 specifically asking for the power to price as  
31 they please, the witnesses entire testimonies  
32 deliver the message that deregulation will not  
33 cause PRI's prices to rise because:  
34

- 35 • there are several companies offering PRI  
36 service;
- 37
- 38 • the presence of several companies forces  
39 PRI prices down;

- there are alternatives to PRI service;
- the presence of alternatives to PRI service forces PRI prices down;
- business customers buy PRI service;
- business customers are "savvy" buyers who search for low-cost PRI service;
- business customers force PRI prices down;
- USTE has been unsuccessful in one-half of its bid for PRI contracts from potential customers, who ultimately chose another provider of PRI services;
- USTE's rate of bid-failure is an indicator that the market forces PRI prices down;
- Contract Service Arrangements (CSAs) force the PRI prices down;
- CSAs provide PRI at prices less than the tariffed prices for PRI;
- CSAs force PRI prices down.

Regarding the number of competitors as proof of a competitive PRI market Ms. Blake testifies:

*"Q Is the number of competitors an effective regulator of the price of PRI services?"*

1           *" A Yes The fact that there so many PRI providers is evidence*  
2           *that, not only are there choices of providers, but there are also*  
3           *pricing choices are a number of companies offering Any*  
4           *provider would be forced by the market to consider the*  
5           *competition when establishing prices for its PRI services "* [Blake,  
6           *Direct, page 7, lines 1-10]*  
7

8           *"The large number and variety of providers of this service are*  
9           *strong evidence of the competitive nature of PRI services in*  
10           *Tennessee"* [Blake, Direct, page 5, lines 23-25]  
11

12       Mr. Marshall testifies:

13  
14           *"Q Is the number of competitors the only factor to demonstrate*  
15           *that competition is an effective regulator of the price of ISDN-PRI*  
16           *service?*  
17

18           *" A No Certainly the fact that there are a number of companies*  
19           *offering ISDN-PRI services . indicates that customers not only*  
20           *have choices of providers, but also pricing choices "* [Marshall,  
21           *Direct, page 3, lines 11-15]*  
22  
23

24       Ms. Blake testifies that alternatives to PRI  
25       service are another form of potential and  
26       existing competition effectively regulating the  
27       price of PRI service:  
28

29           *"Q Are there alternatives to PRI service?*  
30

31           *" A Yes DSL services can be used to replace PRI The wireless*  
32           *phone replaces the voice functionality of PRI"* [Blake, Direct,  
33           *page 6, lines 14-22]*  
34

35       Regarding the impact of business customers as  
36       enforcers of potential and existing competition  
37       acting as an effective regulator of the price  
38       of PRI service, Kathy Blake testifies:  
39



1           *"Business customers are particularly likely to be aware of*  
2           *competitive pricing and to negotiate discounts. Consequently, the*  
3           *market is likely to remain dynamic as a result of these customer's*  
4           *savvy demand for the best available price"* [Blake, Direct, page 4,  
5           *lines 13-16]*

6  
7  
8           *"Q What is the status of PRI competition in Tennessee?"*  
9

10           *" A The PRI market is vigorously competitive. PRI service is*  
11           *marketed to businesses, which is the most competitive sector of the*  
12           *local market"* [Blake, Direct, page 4, lines 18-22]  
13

14           Regarding unsuccessful bids as a proof of a  
15           competitive PRI market, David Marshall  
16           testifies:

17  
18           *" more than 50% of the head-to-head bids are lost to competitors*  
19           *of USTE's ISDN-PRI service "* [Marshall, Direct, page 3, lines 18-  
20           *19]*  
21

22           Regarding CSAs as a proof of a competitive PRI  
23           market, David Marshall testifies:

24  
25           *" CSAs are usually the result of competition. The CSAs filed with*  
26           *the [TRA] include those for ISDN-PRI"* [Marshall, Direct, page  
27           *3, lines 7-9]*  
28

29           Regarding CSAs as a proof of a competitive PRI  
30           market, Kathy Blake testifies:

31  
32           *" BellSouth's own sales experience in the context of CSAs*  
33           *supports its view of the competitive nature of PRI service in*  
34           *Tennessee"* [Blake, Direct, page 5, lines 13-15]  
35

36           **III. CAPD's Opinion Of Bellsouth's and**  
37           **USTE's Proof That Potential And**  
38           **Existing Competition Is An Effective**  
39           **Regulator Of The Price PRI Service**  
40  
41

1 Q\_14. In your opinion have BellSouth and USTE  
2 provided proof that potential and existing  
3 competition acting is an effective regulator of  
4 the price of PRI service?

5  
6 A\_14. No. In my opinion neither company has provided  
7 any proof.  
8  
9

10 **III. A. - BellSouth's Economic**  
11 **Substitution Argument Is Wrong.**

12  
13  
14 Q\_15. Do you agree with Kathy Blake's opinion that  
15 the services she describes as substitutes for  
16 PRI service are in fact substitutes?  
17  
18

19 A\_15. No. I do not agree with Kathy Blake's opinion  
20 that the services she describes are substitutes  
21 for PRI service.  
22

23 For example, in her testimony at page 6 lines  
24 6-7 she asserts that "DSL services can be used  
25 to replace PRI. The wireless phone replaces the  
26 functionality of PRI," but there are at least  
27 two fundamental economic errors in her  
28 argument:  
29

- 30 • She provides no evidence that the  
31 substitutes are themselves markets where  
32 potential and existing competition is  
33 acting as an effective regulator of the  
34 substitute's price;  
35

- She provides no evidence about the substitute-services that the TRA does not regulate, thus depriving the TRA of an economic basis to decide that market conditions for services outside its jurisdiction allow for the deregulation of services within its jurisdiction.

For example, my Schedule One is an article regarding the TRA's decision in January 2004 preventing access to BellSouth's DSL lines. Thus PRI and DSL are not interchangeable from a regulatory viewpoint in Tennessee. The article is available at <http://www.tr.com/tronline/trd/2004/td011404/td011404-05.htm>.

My Schedule Two is an article explaining that ISDN and DSL services are not interchangeable technically. It is available at: <http://www.telos-systems.com/news/reprints/rw06072k.pdf>

Continuing with this example, since 1999 BellSouth has said in its reports to the Securities and Exchange Commission that the company does not compete solely and primarily on price with regard to wireless services:

*"Furthermore, while BellSouth does not compete primarily on the basis of price "[BellSouth Corporation SEC Form 10-K, filed February 25, 1999, page 11]*

*"Furthermore, while Cingular does not compete solely on the basis of price "[BellSouth Corporation SEC Form 10-K, filed February 24, 2004, page 50]*

1 BellSouth's price for wireless service, a  
2 service outside the TRA's price-setting  
3 jurisdiction but nonetheless a substitute for  
4 PRI according to Ms. Blake, is not necessarily  
5 the result of existing and potential  
6 competition in the wireless market. The  
7 wireless price could be the result of  
8 advertising efforts, brand loyalty, market-  
9 share goals, or any other speculative offering.  
10 Thus Ms. Blake's substitution argument has an  
11 unusual economic foundation: a state-regulated  
12 service market is competitive if its non-  
13 regulated substitute is priced according to  
14 considerations other than price.  
15

16 This approach, in addition to the fact that at  
17 least some literature expresses an opinion that  
18 DSL and ISDN are not interchangeable, exposes a  
19 third economic error in Ms. Blake's economic-  
20 substitution argument: She provides no evidence  
21 that the various products she cites are  
22 reasonably interchangeable from the buyer's  
23 viewpoint. Neither company provides evidence  
24 regarding the buyer's viewpoint.  
25

26 In my opinion Kathy Blake provides no evidence  
27 that any of the services she mentions are  
28 interchangeable with PRI. Therefore, my opinion  
29 is that BellSouth's economic-substitution  
30 argument does not support deregulation of PRI  
31 service in Tennessee.  
32  
33  
34  
35  
36

**III. B. - BellSouth's And USTE's Argument, That The Number of Providers Is An Effective Regulator Of Price, Is Wrong.**

Q\_16.

Do you agree with Kathy Blake's and David Marshall's opinions that the number of PRI providers is an effective regulator of price?

A\_16.

No. I do not agree with their opinions that the mere number of PRI providers is an effective regulator of price. There is a fundamental error in their argument:

- Until the relevant markets are defined, and there is evidence on the market share held by each of those providers and their relative financial strength, the number of providers has no meaning. Neither Kathy Blake nor David Marshall offers evidence on these matters.

Market share information should be known and evaluated as an integral part of the deregulation deliberations. I have already testified that BellSouth's stated goal is to improve its market share in all services:

*"Specifically, we intend to*

*"optimize our portfolio of products and services by utilizing marketing approaches targeted to our different customer segments, superior service and marketing strength to grow our market share [emphasis added by CAPD] by offering packages of voice, data and multimedia applications through improved distribution channels and systems "[BELLSOUTH CORP SEC Form 10-K 405 filed 2002/02/28, page 5 ]*

TRA Docket 03-00391

"Petition for Exemption of Certain Services"

CAPD- SB

1  
2 To the extent that BellSouth and USTE are  
3 dominant providers of PRI service in the  
4 relevant markets and have substantial market  
5 share, those companies are in the position to  
6 raise prices while retaining a substantial  
7 number of customers. In addition, their market  
8 share should not be expected to decline  
9 substantially unless other providers are able  
10 to increase quickly their own PRI capacity.  
11

12 Without market-share evidence that is current  
13 and that is expected in the near term, there is  
14 no doubt that BellSouth and USTE are the  
15 dominant providers in the PRI market. In  
16 addition, neither Kathy Blake nor David  
17 Marshall offer evidence on the ability of other  
18 providers to meet the demands of businesses who  
19 would supposedly shift providers in response to  
20 the 30-day rate increase notice that the  
21 petitioners seek. Therefore, there is a  
22 dangerous and immediate probability of the  
23 petitioners successfully monopolizing the PRI  
24 market, with a result that PRI prices will rise  
25 above those that would have been set in a  
26 competitive market.  
27  
28

**III. C. - BellSouth's Argument, That Business Customers' Purchases Of PRI Service Prove That Potential and Existing Competition Is An Effective Regulator Of PRI's Price, Is Wrong.**

Q\_17. Do you agree with Kathy Blake's opinion that business customers' purchases of PRI service prove that potential and existing competition is an effective regulator of PRI's price?

A\_17. No. I do not agree with Kathy Blake's opinion. Just because a certain type of customer buys a certain type of service does not mean the market is competitive. Nor does it mean the market is a monopoly. This reasoning is no better than saying, for example, "Because more than ten percent of the business customers take this service, it must be a competitive market" and then replying, "No, a market is not competitive unless more than fifty percent of the business customers take this service." In my opinion this is irrelevant information contributing nothing to the economic proof.

**III. D. - USTE's Argument, That The Rate of PRI Bid-Failure Is An Indicator Of Potential and Existing Competition Being An Effective Regulator Of PRI's Price, Is Wrong.**

Q\_18. Do you agree with David Marshall's opinion that the rate of PRI bid-failure is indicator of potential and existing competition being an effective regulator of PRI's price?

A\_18. No. I disagree with David Marshall's opinion. The rate of PRI bid-failure is, in my opinion, irrelevant information contributing nothing to the economic proof. The bid-failure rate is too subjective and too incomplete to be a measure or sign that potential and existing competition is effectively regulating the price of PRI service.

For example, maybe USTE won a few contracts valued at several million dollars and lost several contracts valued at one-hundred thousand dollars. Maybe the bid-failure rate in 2004 is less than in 2003.

**III. E. - BellSouth's And USTE's Argument That CSAs Are An Effective Regulator Of Price, Is Wrong.**

Q\_19. Do you agree with the witness's opinions that that CSAs justify the deregulation of PRI?



1 A\_19. No. I disagree with their opinions because the  
2 TRA has always assessed the CSAs' economic  
3 benefit and harm by referencing tariffs.

4  
5 For example, on November 18, 1999 in Docket 99-  
6 00104 the TRA approved BellSouth's CSA known as  
7 TN 98-2507-00. According to the Order, page 2:

8  
9 *"When making her motion to approve the CSA, Director Kyle*  
10 *agreed that 'customers are better off with these agreements than*  
11 *they are under the general tariff'"*

12  
13 Therefore, once PRI is deregulated and the PRI  
14 tariffs are removed as a reference  
15 distinguishing economic benefit from economic  
16 harm, the CSAs are just as likely to cause harm  
17 as they are to confer benefit..

18  
19  
20  
21 **IV. The Unspoken Proposition Within Mr.**  
22 **Marshall's And Ms. Blake's**  
23 **Testimonies: PRI's Wholesale Price**  
24 **Can Be Based On Price Lists Instead**  
25 **Of Being Based On The Prices In PRI**  
26 **Tariffs.**

27  
28  
29 Q\_20. What are the petitioners' opinions regarding  
30 the effect of PRI's deregulation on PRI  
31 tariffs?

32  
33 A\_20. The petitioners have different opinions about  
34 the effect of PRI's deregulation on PRI  
35 tariffs. David Marshall's opinion suggests that  
36 price lists can replace tariffs but that PRI  
37 tariffs and their general terms and conditions

1 will continue as a regulatory principle in  
2 Tennessee.

3  
4 He testifies:

5  
6 *" United can agree that Price Lists be filed with the*  
7 *TRA(effective on filing) and that terms and conditions be*  
8 *maintained in tariffs on file with the Authority, that existing*  
9 *customers be given 30 days notice on rate increases, that prices*  
10 *will not be below costs, and that federal resale obligations remain*  
11 *unaffected "* [Marshall, Direct, page 4, lines 3-6]  
12

13 He points to the consequences of deregulation  
14 in Tennessee: PRI services will be offered  
15 through price lists thus PRI will priced  
16 differently to different customers, but all  
17 customers will enjoy the same general terms and  
18 conditions for the service, and the federal  
19 resale obligation for PRI is unaffected. In  
20 contrast Kathy Blake also opines that price  
21 lists can replace tariffs, but she is silent on  
22 the other issues, not mentioning tariffs, their  
23 general terms and conditions, or the federal  
24 resale issue:  
25

26 *"While I am not an attorney, I understand that BellSouth will seek*  
27 *an order in this docket exempting PRI service to the full extent*  
28 *permitted under the statute with the following caveats. First, unlike*  
29 *its competitors, Bellsouth will be prohibited from pricing its PRI*  
30 *service below cost Second, unlike some of its competitors,*  
31 *Bellsouth will publish a public price listing indicating the price of*  
32 *PRI services Finally, Bellsouth will provide notice to existing*  
33 *customers of any increase in pricing 30 days prior to such*  
34 *increase "* [Blake, Direct, page 8 lines 24 to page 9 line 6]  
35

36 Therefore, BellSouth seeks an order which will  
37 give BellSouth the power not only to raise  
38 PRI's retail price at will, but also raise  
39 PRI's wholesale price at will without observing  
40 the price-cap constraints for non-basic  
41 services. Thus there is an unspoken

1 proposition within Mr. Marshall's and Ms.  
2 Blake's testimonies: When price lists  
3 substitute for tariffs, PRI's wholesale price  
4 can be based on the price lists instead of  
5 being based on the prices in the PRI tariffs.  
6  
7

8 **V. Rebuttal of David Marshall's**  
9 **Testimony That Federal Resale**  
10 **Obligations Remain Unaffected By**  
11 **Deregulating PRI.**

12  
13  
14 Q\_21. Has the TRA established resale rates for PRI  
15 service in Tennessee?

16  
17 A\_21. Yes. The TRA established resale rates for PRI  
18 service in Tennessee in 1996.  
19

20 Q\_22. Why did the TRA establish resale rates for PRI  
21 service?  
22

23 A\_22. The TRA established resale rates for PRI  
24 service because state regulatory agencies are  
25 partners with the FCC in the implementation of  
26 the 1996 Telecommunications Act.  
27

28 For example, in CC Docket No. 97-100 [FCC99-  
29 386] "In The Matter Of American Communications  
30 Services, Inc. MCI Telecommunications Corp.  
31 Petitions For Expedited Declaratory Ruling  
32 Preempting Arkansas Telecommunications  
33 Regulatory Reform Act Of 1997 Pursuant To  
34 Sections 251, 252, And 253 Of The  
35 Communications Act Of 1934, As Amended," the  
36 Federal Communications Commission (FCC) said at  
37 paragraph 35:  
38

*' Sections 251 and 252 of the Communications Act create a partnership between the Commission and state commissions in defining the precise parameters of those sections' requirements. State commissions are statutorily authorized to decide for themselves what sections 251 and 252 require, as long as their decisions do not (i) conflict with other requirements of section 251, (ii) substantially prevent implementation of the requirements of section 251 and the purposes of sections 251-261, (iii) violate section 253, or (iv) at least in the context of arbitrating and approving interconnection agreements, contradict the Commission's implementing rules. Indeed, in at least two of its references to the 'requirements' of section 251, the Communications Act identifies our rules as a subset, not a complete set, of the requirements of section 251. Therefore, one of the very 'requirements' of the Communications Act is that state commissions have the authority to decide for themselves (within the previously described limits) exactly what sections 251 and 252 require "*

**Q\_23. What portion of the 1996 Telecommunications Act relates to the "federal resale obligation" described by Mr. Marshall?**

**A\_23. The "federal resale obligation" described by Mr. Marshall is defined in paragraph 871 of FCC's Local Competition Order otherwise known as "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order; CC Docket No. 96-98."**

*"871 Section 251(c)(4)(A) imposes on all incumbent LECs the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." We conclude that an incumbent LEC must establish a resale rate for each retail service that (1) meets the statutory definition of a "telecommunications service," and (2) is provided at retail to subscribers who are not "telecommunications carriers."*

1 Q\_24. When the TRA exercised its authority to  
2 establish the resale rates under section 251 of  
3 Telecommunications Act of 1996, what procedure  
4 did the TRA employ ?  
5

6 A\_24. When the TRA exercised its authority to  
7 establish resale rates, the TRA did so by  
8 establishing resale PRI rates on the basis of  
9 the PRI tariffs in Tennessee, with the result  
10 that the resale price for PRI service in  
11 Tennessee is approximately 16 percent below the  
12 price in the PRI tariff.  
13

14 Q\_25. How many resale PRI rates are there for PRI  
15 service?  
16

17 A\_25. There is just one resale rate per tariffed PRI  
18 service.  
19

20 Q\_26. In your opinion, how many resale PRI rates  
21 would there be if the PRI tariff were replaced  
22 by a price list, which contains more than one  
23 price for PRI service?  
24

25 A\_26. In my opinion, there would be as many resale  
26 PRI rates as there are retail PRI prices.  
27

28 Q\_27. In your opinion why is there just one resale  
29 rate per tariffed PRI service?  
30

31 A\_27. In my opinion, there is just resale one rate  
32 per tariffed PRI service because the FCC  
33 implemented its portion of the partnership with  
34 the state commissions by establishing the  
35 standard that a resale rate is derived from a  
36 state tariff. According to paragraph 872 of the  
37 Local Competition Order:  
38

1                   *"We need not prescribe a minimum list of services that are subject*  
2                   *to the resale requirement. State commissions, incumbent LECs,*  
3                   *and resellers can determine the services that an incumbent LEC*  
4                   *must provide at resale rates by examining that LEC's retail*  
5                   *tariffs."*  
6

7    **Q\_28.       Have you found any mention of "price lists" in**  
8                   **the FCC's Local Competition order?**  
9

10   **A\_28.**       No. I have not found any mention of "price  
11                   lists" in the FCC's Local Competition Order.  
12

13   **Q\_29.       Have you found any mention of "price lists" in**  
14                   **the current Code of Federal Regulations which**  
15                   **list the FCC's rules regarding the resale**  
16                   **obligation that Mr. Marshall describes.**  
17

18   **A\_29.**       No. I have not found any mention of price lists  
19                   in the CFR regarding the FCC and resale. My  
20                   Schedule 2 is copy of those regulations  
21                   available from the Government Printing Office  
22                   at  
23                   [http://frwebgate5.access.gpo.gov/cgi-](http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=037113244134+1+0+0&WAISaction=retrieve)  
24                   [bin/waisgate.cgi?WAISdocID=037113244134+1+0+0&W](http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=037113244134+1+0+0&WAISaction=retrieve)  
25                   [AISaction=retrieve](http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=037113244134+1+0+0&WAISaction=retrieve)  
26  
27

28   **Q\_30.       Have you found any mention of a "tariff" in**  
29                   **your Schedule 2?**  
30

31   **A\_30.**       No. I have not found any mention of "tariff"  
32                   Schedule 2.  
33

34   **Q\_31.       What resale pricing standard did you find in**  
35                   **the CFR?**  
36

37   **A\_31.**       I found the resale pricing standard in section  
38                   51.607:  
39

40                   *"Sec 51 607 Resale pricing standard"*

1  
2           *" The resale rate that an incumbent LEC may charge for a*  
3           *telecommunications service provided for resale to other*  
4           *telecommunications carriers shall equal the rate for the*  
5           *telecommunications service, less avoided retail costs, as described*  
6           *in section 51 609 For purposes of this subpart, exchange access*  
7           *services, as defined in section 3 of the Act, shall not be considered*  
8           *to be telecommunications services that incumbent LECs must make*  
9           *available for resale at resale rates to requesting*  
10           *telecommunications carriers "*  
11

12   Q\_32.       **In your opinion is Mr. Marshall implying that**  
13               **any price in a price list can be "the rate for**  
14               **the telecommunications service" to which**  
15               **avoided retail costs are applied?**  
16

17   A\_32.       Yes. In my opinion. Mr. Marshall's testimony  
18               implies exactly that -- any price in a price  
19               list can be "the rate for the  
20               telecommunications service" to which avoided  
21               retail costs are applied. Thus, multiple resale  
22               rates could spring from a price list.  
23

24               In the past both the TRA and the FCC relied on  
25               tariffs to implement and enforce the resale  
26               provisions of the 1996 Telecommunications Act.  
27               However, price-lists give rise to multiple  
28               resale rates for the same service where the  
29               dominant providers, BellSouth and USTE, have no  
30               constraint on the retail price they set. This a  
31               clear departure from the current situation  
32               where the price-cap plans limit the price  
33               increases for non-basic services. Therefore,  
34               Mr. Marshall's opinion, that the federal resale  
35               obligation would be unaffected by PRI  
36               deregulation, is not wholly correct. Whereas  
37               the current federal-state partnership and  
38               practice establishes an upper-limit on a resale  
39               price because it is derived from the underlying  
40               constraints of tariffs filed in accordance with

1 price-cap plans, the future federal-state  
2 partnership removes the upper-limit on resale  
3 prices.  
4

5 Therefore, if the tariff currently on file  
6 reflecting PRI service was altered only such  
7 that the price for such services was removed  
8 and contained instead in a price list, all  
9 rates and charges for PRI service set forth in  
10 a publicly-filed price list must contain not  
11 only the retail rate but also one of two  
12 additional conditions, 1) the resale rate which  
13 corresponds to retail rate, or; 2) all  
14 conditions and information allowing a  
15 prospective reseller to calculate its wholesale  
16 price of PRI service that would be purchased  
17 from BellSouth or USTE. To the extent that the  
18 price list does not fulfill one or both  
19 conditions, the price-list would not implement  
20 the federal resale obligation, and the federal  
21 resale requirements would be undermined.  
22

23  
24 This concludes my testimony at this time.  
25  
26  
27



Before the

**TENNESSEE REGULATORY AUTHORITY**

IN RE:

**BELLSOUTH TELECOMMUNICATIONS, INC., CITIZENS  
COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.  
PETITION FOR EXEMPTION OF CERTAIN SERVICES**

**DOCKET NO. 03-00391**

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**AFFIDAVIT**

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I, Steve Brown, for the Consumer Advocate and Protection Division of the Attorney General's Office, hereby certify that the attached Rebuttal Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate and Protection Division.

  
STEVE BROWN  
Economist

Sworn to and subscribed before me  
this 18<sup>th</sup> day of October, 2004.

  
NOTARY PUBLIC

My commission expires: 7/21/2007

79570

## TENNESSEE REGULATOR: BellSouth NOT REQUIRED TO PROVIDE DSL TO CLEC END USERS

In an oral ruling issued earlier this week, the Tennessee Regulatory Authority (TRA) decided that BellSouth Telecommunications, Inc., would not be required to provide its digital subscriber line (DSL) service to voice customers of competitive local exchange carriers.

The issue arose in February 2003 when ITC^DeltaCom Communications, Inc., petitioned TRA for arbitration of its interconnection agreement with BellSouth. DeltaCom submitted a matrix of issues for resolution, which included asking TRA to require BellSouth to provide DSL service over the same line to the same end user to which DeltaCom was providing UNE-P (unbundled network element-platform) local voice service. DeltaCom said that BellSouth's refusal to do so constituted an "anticompetitive tying arrangement."

In deciding the issue this week, TRA found in favor of BellSouth on the DSL issue, saying there was not "sufficient proof" in the record to support "tying arrangements" to the level of showing "anticompetition."

BellSouth told TRDaily that "TRA's ruling is consistent with rulings made by the FCC on this issue, which has regulatory authority over Internet access services," pointing out that "as DSL is an unregulated service, the TRA's decision not to direct how and who we market to is appropriate." Noted BellSouth, "Our shareholders have funded the deployment of DSL in Tennessee, other companies have the same opportunity to make these investments as well."

The TRA's written order on the matter was not immediately available (Docket - 03-00119).

BellSouth has been involved in similar arbitration proceedings in several other states including Georgia, Kentucky and Louisiana. Regulatory commissions in those states, however, have told BellSouth that it cannot refuse to provide DSL service to CLEC voice customers. The company has a petition pending at the FCC for a declaratory ruling that would prohibit states from regulating Internet access by forcing the incumbent to provide broadband services to its competitors' voice customers (WC docket 03-251). - Maureen Berestecky, maureen.berestecky@aspenpublishers.com

TR Daily, January 14, 2004

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<http://www.tr.com/tronline/trd/2004/td011404/td011404-05.htm>

# Radio World

FEATURES

Reprinted from June 7, 2000

GUEST COMMENTARY

## DSL vs. ISDN: Not Interchangeable

Rolf Taylor

*The author is applications engineer with Telos Systems, a manufacturer of codecs and phone systems for radio station use.*

DSL — Digital Subscriber Lines — are the hot new product being offered by telephone companies to customers hungry for fast, relatively inexpensive online connections

You can hardly pick up a newspaper or magazine without seeing ads promising connections “100 times faster than a 56k modem” The temptation to sign up immediately is great

Many audio professionals, especially radio stations, wonder why they can’t order DSL lines and use them for a “one-stop connectivity” approach — for the Internet and everything else, including the real-time audio transmission now afforded with dial-up ISDN through codecs like the Telos Zephyr

Why order ISDN when DSL is the hot new thing?

Others have come to us wanting to use our codecs with DSL lines they have just installed

Let’s help clear up the confusion by looking at current offerings from the phone companies and discussing their appropriateness for the applications now served by codecs and ISDN lines

The telcos are pushing DSL so hard for a lot of reasons, but chief among them is cost — *their* cost But that doesn’t make it the right choice for every application

Unfortunately, the telcos add to the

problem by telling people ISDN is an obsolete technology, when that isn’t really true

### ISDN for Internet?

ISDN is not the ideal choice for packet connections to the Internet This is one area where the telcos have it right when they push the new technologies for that purpose

Packet data allows for data to be lost and then re-sent

For this reason it does not support “real-time” applications such as the Zephyr codec, which require a continuous uninterrupted stream of data

Systems designed for Internet use, such as Telos’ Audioactive, have large buffers that allow time for packet retransmission In fact, our Audioactive netcoder will work well with DSL by taking the audio input and providing a data stream output that is compatible with DSL

But ISDN remains the ideal choice where circuit switched connections are needed If you need play-by-play from the live game, or you’re in a network broadcast situation feeding other stations, the Zephyr and ISDN are your most flexible, reliable and cost-effective way to go

Unfortunately, the phone companies seem to be making some of the same mistakes with ADSL and the newer DSL types (technically, ISDN and T1 lines are types of DSL) that they did in marketing ISDN

### Proprietary technology

Currently, each phone company is using a proprietary technology That



means you probably have little or no choice in the manufacturer of the “Data Communications Equipment” — the DCE, or modem

In other words, if you move to another region, you will need to buy new equipment

Furthermore, most of the ADSL/DSL offerings are meant for connecting directly to an Internet Service Provider They do not allow one to dial to other users — one of the main benefits afforded by ISDN They also do not allow a call to an ISDN line

Because one of the advantages of having an audio codec is to dial up the tens of thousands of other codecs around the world, ISDN again is the best choice for the needs of most audio broadcast and professional audio applications *(continued next page)*

GUEST COMMENTARY

Rolf Taylor

Another important consideration is the availability and widespread installed base of ISDN. In many European countries, ISDN lines are more common than POTS lines.

DSL raises a few other questions, especially in this early stage of its marketing, that might be cause for concern.

One is cost — *your* cost. While it's true that many companies are offering DSL lines at a low price to generate a frenzy of interest, the pricing can be deceptive.

Sometimes a particular telco may be actually a -re-seller, having had to buy DSL from another company. With several "middlemen" like this, the price of DSL certainly could vary drastically from one place to another.

Another is the reliability of the network. Your DSL connection might actually have to go through several networks to get to its final destination, and each hop can slow it down.

Also, DSL is not available everywhere. It is in major cities, and the second-tier penetration is proceeding, but there is no definitive answer on when it will be offered in the remotest locations.

One of the main questions engineers must research before rushing ahead with DSL is: Can their telco provide a newer-DSL line from the studio to the transmitter?

If so, the technology has some potential for certain types of full-time connections. But as is generally the case, the phone company end of a DSL line goes to either the telco ISP or into the packet switched network.

While the phone companies keep promoting the new technologies as "replacements for ISDN," they really



appear to be "alternatives to ISDN for connecting to your Internet provider."

Which is very cool in today's day and age, but not an equivalent technology, and certainly not a good choice as a replacement.

## Why can't we use DSL for 'one-stop connectivity' including the Internet and real-time audio transmission?

This leads us to the \$64,000 question asked by callers to our company: Can you use Zephyr with DSL?

### But will it work

Technically, you might be able to use these DSL offerings with a Zephyr if the DCE allows two synchronous data streams at 56 or 64 kbps.

An engineer would rightly be skeptical about finding such a beast, because terminal adapters around today have 10 Base-T only, which

does not support synchronous constant bit rate connections to guarantee constant data throughput.

When you consider the pros and cons, Zephyr and ISDN is the way to go for most broadcasters' remote audio needs, and probably will be for some time to come.

If you want to focus on audio streaming on the Internet, Audioactive will work nicely with DSL and allow you to get the benefits of the cost-savings being marketed by so many telecommunications companies today.

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Contact the author via e-mail to [info@telos-systems.com](mailto:info@telos-systems.com)

*RW welcomes other points of view and white papers from suppliers answering frequent questions from radio users.*

*Write or e-mail to the address on the inside last page of this issue.*

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## TITLE 47--TELECOMMUNICATION

### CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

#### PART 51\_INTERCONNECTION--Table of Contents

##### Subpart G\_**Resale**

##### Sec. 51.601 Scope of **resale** rules.

The provisions of this subpart govern the terms and conditions under which LECs offer telecommunications services to requesting telecommunications carriers for **resale**.

##### Sec. 51.603 **Resale** obligation of all local exchange carriers.

(a) A LEC shall make its telecommunications services available for **resale** to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for **resale** that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

##### Sec. 51.605 Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for **resale** at wholesale rates that are, at the election of the state commission--

(1) Consistent with the avoided cost methodology described in Sec. Sec. 51.607 and 51.609; or

(2) Interim wholesale rates, pursuant to Sec. 51.611.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for **resale** at wholesale rates to requesting telecommunications carriers.

(c) For purposes of this subpart, advanced telecommunications services sold to Internet Service Providers as an input component to the Internet Service Providers' retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for **resale** at wholesale rates to requesting telecommunications carriers.

(d) Notwithstanding paragraph (b) of this section, advanced telecommunications services that are classified as exchange access services are subject to the obligations of paragraph (a) of this section if such services are sold on a retail basis to residential and business end-users that are not telecommunications carriers.

(e) Except as provided in Sec. 51.613, an incumbent LEC shall not impose restrictions on the **resale** by a requesting carrier of telecommunications services offered by the incumbent LEC.

[61 FR 45619, Aug. 29, 1996, as amended at 65 FR 6915, Feb. 11, 2000]

Sec. 51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for

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**resale** to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for **resale** at wholesale rates to requesting telecommunications carriers.

[65 FR 6915, Feb. 11, 2000]

Sec. 51.609 Determination of avoided retail costs.

(a) Except as provided in Sec. 51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for **resale** at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under Sec. 32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include, as direct costs, the costs recorded in USOA accounts 6611(product management and sales), 6613 (product advertising) and 6620 (Services) (Secs. 32.6611, 32.6613 and 32.6620 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (Secs. 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6620 described in paragraph (c) of this section (Sec. Sec. 32.6611, 32.6613 and 32.6620 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs

in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112 through 6114 and 6211 through 6560 described in paragraph (c) of this section (Sec. 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for **resale** to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under Sec. 32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 67 FR 5700, Feb. 6, 2002]

Sec. 51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in Sec. 51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with Sec. 51.609.

Sec. 51.613 Restrictions on **resale**.

(a) Notwithstanding Sec. 51.605(b), the following types of restrictions on **resale** may be imposed:

[[Page 73]]

(1) Cross-class selling. A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for **resale**, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(2) Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more

than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on **resale** not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) Branding. Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for **resale**, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on **resale**.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

#### Sec. 51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a **resale** basis to the same limited group of customers that have purchased such a service in the past.

#### Sec. 51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in Sec. 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for **resale**. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for **resale**, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers.